


STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: May 18, 2023

AGENCY: Niagara

FH #: 8607216J

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the Niagara County	:
Department of Social Services	:

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on June 5, 2023, in Niagara County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Deanna Atkin, Sr. Housing Case Manager (by telephone)

**ISSUE**

Was the Agency's determination, by notice dated May 10, 2023, to deny the Appellant's application for temporary housing assistance on the grounds that the Appellant had available resources to meet her temporary housing needs correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. On May 10, 2023, the Appellant, age 35, presented at the Agency as homeless and applied for Temporary Housing Assistance (THA) and emergency shelter placement for herself only.

2. On her application, the Appellant indicated that she was unemployed but was starting a new job on May 22, 2023 and that she had \$150.00 in a Chime checking account.

3. By manual notice dated May 10, 2023, the Agency determined to deny the Appellant's request for emergency shelter placement, stating "You have available resources of \$170.00 to meet your temporary housing needs" and cited NYCRR 352.7, 352.35, 352.23, 370.3 and 94ADM20 in support of its determination.

4. On May 18, 2023, the Appellant requested this fair hearing.

## **APPLICABLE LAW**

### **Temporary Housing Assistance**

As a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member. 18 NYCRR 352.35(c).

An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance. 18 NYCRR 352.35(c)(1).

An individual or family must cooperate with the social services district in developing, carrying out and completing an independent living plan, if the social services district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to housing other than temporary housing. When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance. When an individual or family unreasonably fails two or more times to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance and the individual or family is disqualified from receiving temporary housing assistance until the failure ceases, or for 30 days, whichever period of time is longer. 18 NYCRR 352.35(c)(2).

An individual or family must actively seek housing other than temporary housing, as required by the social services district, and not unreasonably refuse or fail to accept any such housing, including but not limited to, permanent housing, reunification with family or relocation to other appropriate residential facility. When an individual or family fails to comply with these requirements, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer. 18 NYCRR 352.35(c)(3).

An individual or family must refrain from engaging in acts which endanger the health or

safety of oneself or others, or which substantially and repeatedly interfere with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer. 18 NYCRR 353.35(c)(4).

Prior to denying or discontinuing temporary housing assistance pursuant to subdivision (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral. 18 NYCRR 352.35(d).

A homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:

- (1) requirements for participation in employment and training programs, in accordance with Part 385 of this Title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;
- (2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;
- (3) requirements for participation in the child support enforcement program, as described in sections 351.2(e)(2)(iv), 369.2(b) and 370.2(d) of this Title;
- (4) requirements to apply for supplemental security income benefits, as described in sections 369.2(h) and 370.2(c)(5) of this Title;
- (5) requirements for location of resources, as described in section 351.2(e) of this Title; and
- (6) requirements for acceptance of the offer of a home, as described in section 370.2(c) of this Title.

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title. 18 NYCRR 352.35(e).

A homeless individual or family applying for or receiving temporary housing assistance is subject to the income and resource requirements of this Title; and must cooperate with the social services district's efforts to determine available resources, and must apply for and use any benefits and resources that will reduce or eliminate the need for temporary housing assistance, in

accordance with the provisions of this Title. 18 NYCRR 352.35(f)

A social services district must deny or discontinue a person's or family's temporary housing assistance if it determines that the person or family has other housing available, or if it determines, consistent with the regulations in this Title, that the person or family is required to, but is not applying income and/or using available resources to reduce or eliminate the need for temporary housing assistance. 18 NYCRR 352.35(g).

## **Adequate Notice**

### **Notice Requirements**

A notice "need only be reasonably specific, in light of all the relevant circumstances, to apprise the party whose rights are being determined of the charges against him... and to allow for the preparation of an adequate defense" Block v Ambach, 73 N.Y.2d 323, 333 (1989). In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358- 3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Public Assistance or Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Public Assistance or Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Public Assistance or Medical Assistance in another district.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- for reductions, the previous and new amounts of assistance or benefits provided; o the effective date of the action;
- the specific reasons for the action;
- the specific laws and/or regulations upon which the action is based;
- the recipient's right to request an Agency conference and fair hearing;
- the procedure for requesting an Agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;

- an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- the circumstances under which public assistance, medical assistance, SNAP benefits or services will be continued or reinstated until the fair hearing decision is issued;
- a statement that a fair hearing must be requested separately from a conference;
- a statement that when only an Agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, SNAP benefits or services;
- a statement that participation in an Agency conference does not affect the right to request a fair hearing;
- the right of the recipient to review the case record and to obtain copies of documents which the Agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;
- the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; o the right to present written and oral evidence at the hearing;
- the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing; o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and o a copy of the budget or the basis for the computation, in instances where the social services Agency's determination is based upon a budget computation.

#### 18 NYCRR 358-2.2

Memorandum, Russel J. Hanks, May 1, 1991, Policy Clarifications, in material part:

In evaluating the adequacy of a notice, the hearing officer should consider if the appropriate notice was sent and if the explanation of the district's intended action is understandable by the particular Appellant.

Where the social services district's determination was based on a budget computation, a copy of the budget or the basis for the computation must be provided in or with the notice as required by 18 NYCRR Section 358-2.2n. Failure to meet this regulatory requirement makes a notice of intent void. A notice that fails to provide any reason or explanation for an intended action is void. A notice that cites the wrong regulation as justification for the intended action, while deficient, may not be void. In every case involving a deficient notice, the hearing officer must ensure that the deficiency does not result in harm to the Appellant.

### **02-ADM-02 Meeting the Emergency/Immediate Needs of Temporary Assistance (TA) Applicants/Recipients**

Section IV(A) of 02-ADM-02 states, in relevant part:

#### Income and Resources

To meet an emergency/immediate need districts must explore all available resources and income, including available resources in the community, before the district can grant assistance. Emergency/immediate need financial eligibility determination is not subject to the same budgeting process by which financial eligibility is determined for ongoing cash/non-cash assistance. Financial eligibility for assistance to meet an emergency/immediate need is based on available income and resources (cash and non-cash) to meet the emergency/immediate need. The category of assistance under which the payment is authorized may include separate income or other eligibility criteria for some types of emergency situations (see Section D of this Directive).

Examples of possible resources include:

- Cash on hand (not credibly earmarked for **essential items such as transportation expenses for employment/medical needs, food** or necessary items of need as identified under Part 352)

#### **16-ADM-11 Temporary Housing Assistance: Consolidation and Clarification of Policy**

Section V(H) of 16-ADM-11 states in relevant part:

#### 2. Resources

A homeless individual or family may have resources that are available to meet the costs of temporary housing. These resources must be used to reduce the need for THA. For example, the individual may have \$500 in a bank account. This must be applied toward the cost of the temporary housing. See example #8 in attachment C.

Responsibilities of SSD:

**The SSD must notify the individual or family in writing that they must use the available resource to meet the costs of temporary housing, how much they must pay, when they must pay it and where they must pay it. This information must be provided as soon as the SSD determines the amount of the resource that must be applied to the cost of the shelter.**

#### **DISCUSSION**

The Agency's determination to deny the Appellant's application for temporary housing assistance on the grounds that the Appellant had available resources to meet her temporary housing needs was not correct and is reversed.

The facts on the record are uncontroverted. On May 10, 2023, the Appellant, age 35, presented at the Agency as homeless and applied for Temporary Housing Assistance (THA) and emergency shelter placement for herself only. On her application, the Appellant indicated that she was unemployed but was starting a new job on May 22, 2023 and that she had \$150.00 in a Chime checking account. By manual notice dated May 10, 2023, the Agency determined to deny the Appellant's request for emergency shelter placement, stating "You have available resources of \$170.00 to meet your temporary housing needs" and cited NYCRR 352.7, 352.35, 352.23, 370.3 and 94ADM20 in support of its determination. On May 18, 2023, the Appellant requested this fair hearing.

At the hearing, the Agency presented records which were admitted into evidence as "Agency Evidence." The records included the Appellant's May 10, 2023 application for THA, the subject manual notice denying the Appellant's application for an emergency shelter placement (Agency Evidence, pg. 2), and a second May 10, 2023 notice relative to a Housing Case Manager referral (Agency evidence, pg. 4). Appellant's counsel submitted a memorandum in support of Appellant's position which was entered into evidence as "Appellant Evidence." The only notice at issue in the subject matter is the Agency's May 10, 2023 notice denying emergency shelter placement on the ground of available resources (Agency Evidence, pg. 2).

At the fair hearing, the Agency Representative stated that the Appellant's application for emergency shelter for the night of May 10, 2023 was denied because the Appellant had indicated during her interview the same day that she had approximately \$170.00 in a Chime checking account. The Agency Representative stated that while the Agency's notice did not include language regarding a need to come back the next day for a full housing interview, that information had been verbally provided to the Appellant by the Agency worker who met with her on May 10, 2023. The Agency Representative stated that while the Appellant may have had an *emergency* need on May 10, 2023, she did not have an *immediate* need. The Agency Representative stated that had the Appellant returned to the Agency the following day with only \$60.00-\$70.00, there would have been a different result.

Appellant was present for the beginning of the fair hearing but then requested her attorney continue in her absence, as she had been participating by telephone while on her lunch break and needed to go back to work. There were no objections. Appellant's counsel argued that the Agency's notice was inadequate in that it failed to comply with the requirement that the Agency must notify an individual or family in writing that they must use the available resource to meet the costs of temporary housing, how much they must pay, when they must pay it and where they must pay it, pursuant to 16-ADM-11. Appellant's counsel argued that the Agency was required to be provided to the Appellant as soon as the Agency determined the amount of the resource that must be applied to the cost of the shelter.

In response, the Agency Representative stated that 16-ADM-11 did not apply to the instant matter, as the Appellant was still in the pre-investigative grant stage of applying for Temporary Housing Assistance, and as the Agency had not identified the Appellant's need for shelter as an immediate need. The Agency Representative stated that a full housing interview was not conducted on May 10, 2023 because there was not enough time. She stated that when a

person has resources available to meet their need for shelter for the same night of the date of application, the Agency's analysis stops after 02-ADM-02 because there is no immediate need.

Appellant's counsel argued, in the alternative, that even if the Agency was correct in its assertion that 16-ADM-11 was inapplicable to the instant matter, the Agency had failed to meet its obligations pursuant to 02-ADM-02 in that the Agency should have considered the money in Appellant's Chime account as earmarked for other expenses given the Agency's awareness that the Appellant had no income and would not begin her new job until May 22, 2023.

Pursuant to 18 NYCRR 352.35(f), a homeless individual or family applying for or receiving temporary housing assistance is subject to the income and resource requirements of this Title; and must cooperate with the social services district's efforts to determine available resources, and must apply for and use any benefits and resources that will reduce or eliminate the need for temporary housing assistance, in accordance with the provisions of this Title. Therefore, it was appropriate for the Agency to explore the Appellant's resource of a Chime bank account. Pursuant to 18 NYCRR 352.35(b)(3) "Temporary housing" includes family shelters authorized by Part 900 of this Title and section 352.8(a) of this Part, room and board authorized by section 352.8(b) of this Part which is provided to a homeless person on a temporary basis, hotel/motel facilities authorized by section 352.3(e) of this Part and shelters for adults authorized by Part 491 of this Title. According to 16-ADM-11, Section V(H)(2) Resources: A homeless individual or family may have resources that are available to meet the costs of *temporary housing*. These resources must be used to reduce the need for THA..." (emphasis added).

First, it is noted that the Appellant had indicated on her application that the Chime account balance was \$150.00, and the Agency's interview notes indicated the balance was \$170.00. The discrepancy does not change the analysis of this case. At the time the Agency denied the Appellant's May 10, 2023 application for emergency shelter, the Agency had determined the Appellant's Chime balance was a resource she must at least partially deplete to be eligible for temporary housing. The Agency's contention that 16-ADM-11 did not apply at this time is untenable. At the point the Agency determined the Appellant had resources available to meet the cost of temporary housing, if not earlier, the Agency's obligations as outlined in 16-ADM-11 were triggered. 16-ADM-11 provides, "the SSD must notify the individual or family in writing that they must use the available resource to meet the costs of temporary housing, how much they must pay, when they must pay it and where they must pay it. This information must be provided *as soon as* the SSD determines the amount of the resource that must be applied to the cost of the shelter." (emphasis added). The Agency determined that the Appellant needed to spend at least some of the money in her Chime account before she would be eligible for emergency shelter and THA. The Agency neither notified the Appellant of this amount, nor provided the amount at the hearing. The Agency Representative testified that there is no resource threshold and that had Appellant returned the next day with only \$60.00-\$70.00 she would have been placed in a shelter. However, the record was devoid of evidence that the Appellant was advised of same, and in any case, a simple instruction to come back after the Chime account balance was lower would not have satisfied the Agency's obligations. Upon conclusion of the hearing, it was still unclear how much the Agency had decided the Appellant would have had to



utilize to be considered without available resources to pay for her own shelter. As a result of the Agency's failure to notify the Appellant in writing of how much of the available resource she needed to use, how she should pay that amount, and when and where she should pay, the Appellant was left to guess as to both the Agency's method of determining available resources and how she should meet her emergency need of shelter. The Agency's notice was too vague to support the Agency's action, and the insufficiency of the notice harmed the Appellant. See 18 NYCRR 358-2.2 As such, the Agency's determination must be reversed.

Counsel's alternative argument was that pursuant to 02-ADM-02, the Appellant's Chime account balance could have been considered earmarked for transportation and other costs. It was unclear whether the Appellant expressed such a contention to the Agency during her interview. However, it was undisputed that the Appellant notified the Agency she was beginning a new job in a neighboring county less than two weeks after the date of her application for emergency shelter. The record showed that Appellant did in fact begin her new job on the scheduled date. During the hearing, the Appellant testified that she travels to work via public transit, which takes 2.5 hours each way. She testified that she could not afford to spend money on a hotel when she was homeless because she needed to have enough money for transportation to and from work and because she needed feminine hygiene supplies and toiletries. The Appellant testified that as a result of being denied emergency shelter, she slept on a park bench for multiple nights. The Appellant testified in a forthright and detailed manner. She responded directly to questions, displaying candor. Her testimony is credited in full. Pursuant to 02-ADM-02, resources include cash on hand that is "not credibly earmarked for essential items such as transportation expenses for employment/medical needs, food or necessary items of need as identified under Part 352). Given that the Agency was advised of both the date and location of Appellant's forthcoming employment, a full analysis of the Appellant's resources should have included an analysis into her foreseeable expenses. As a result of the Agency's determination, the Appellant was forced to choose between losing her job and sleeping outside at a time the temperature fell below 50 degrees. This is not acceptable. The failure to adequately examine the Appellant's resources was an Agency failure that precludes affirming the Agency's determination that Appellant was not eligible for emergency shelter because of her resources.

Based on the foregoing, the Agency's May 10, 2023 notice must be reversed.

### **DECISION AND ORDER**

The Agency's determination, by notice dated May 10, 2023, to deny the Appellant's application for temporary housing assistance on the grounds that the Appellant had available resources to meet her temporary housing needs was not correct and is reversed.

1. The Agency is directed to withdraw the May 10, 2023 notice;
2. The Agency is directed to reevaluate the Appellant's application for emergency shelter, offering the Appellant the opportunity to submit any additional information needed to reach a determination; and

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3. The Agency is directed to notify the Appellant in writing of its new determination.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York  
06/14/2023

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE  
By

A handwritten signature in black ink, appearing to read "Selma Lee". The signature is fluid and cursive, with the first name "Selma" and the last name "Lee" clearly distinguishable.

Commissioner's Designee

## Assistance Information

Important notice enclosed. If you need help reading the notice, call 1-800-342-3334.

Aviso importante adjunto: si necesita ayuda para leer este aviso, marque el 1-800-342-3334.

গুরুত্বপূর্ণ নোটিস সংযুক্ত। আপনার যদি নোটিসটি পড়তে সাহায্যের প্রয়োজন হয়, তাহলে কল করুন 1-800-342-3334 নম্বরে।

إخطار هام مرفق. إذا احتجت إلى المساعدة في قراءة الإخطار يرجى الاتصال بالرقم 1-800-342-3334.

內附重要通告。如需幫助閱讀此通告，請撥打1-800-342-3334。

Un avis important est joint à ce document. Si vous avez besoin d'aide pour la lecture de l'avis, appelez le 1-800-342-3334.

Avi enpòtan enkli. Si w bezwen èd pou w li avi a, rele 1-800-342-3334.

중요한 공지사항이 포함되어 있습니다. 이 공지사항을 읽는데 도움이 필요하시면, 1-800-342-3334로 전화하세요.

Содержит важную информацию. Если при чтении этого извещения у Вас возникнут трудности, позвоните по телефону 1-800-342-3334.

Kèm theo là thông báo quan trọng. Nếu quý vị cần giúp đọc thông báo này, hãy gọi 1-800-342-3334.

בייגעל"גט א וויכטיקע מעלדונג. אויב איר דארפט הילף בייים לייענען די מעלדונג, קלינגט אן 1-800-342-3334.

Avviso importante incluso. Se ha bisogno di aiuto per leggere l'avviso, contatti il numero 1-800-342-3334.

Ważna informacja w załączeniu. Jeśli potrzebujesz pomocy w przeczytaniu tej informacji, zadzwoń pod numer 1-800-342-3334.

اہم نوٹس منسلک ہے۔ اگر آپ کو نوٹس پڑھنے میں مدد چاہیے تو 1-800-342-800 پر کال کریں۔